has been discarded and is no longer binding on them in any way.

* * * * * *

Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, which ever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided*, however, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further*, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended.

§153. NATIONAL BOARD OF ADJUSTMENT — GRIEVANCES — INTERPRETATION OF AGREEMENTS.

Sec. 3. First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board," the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

* * * * * *

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, to-

gether with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such board of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involv-train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

* * * * * *

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up

to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

* * * * * *

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which

is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such a suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

* * * * * *

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or cla ses of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 7222

William R. Sampsell, et al.,
Appellants,

versus

The Baltimore and Ohio Railroad Company, a body corporate, Brotherhood of Railroad Trainmen, an unincorporated association, General Grievance Committee, Brotherhood of Railroad Trainmen, Baltimore and Ohio Railroad System, an unincorporated association,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE
(R. Dorsey Watkins, District Judge)

(Argued June 22, 1956. Decided July 13, 1956.)

Before PARKER, Chief Judge, SOPER, Circuit Judge, and TIMMERMAN, District Judge.

PER CURIAM:

This is an appeal from an order denying an injunction and dismissing for lack of jurisdiction an action brought by

railroad employees against the Baltimore & Ohio Railroad Company and a railroad brotherhood with which it had entered into a union shop agreement pursuant to the 1951 amendment to the Railway Labor Act. 45 USCA 152 Eleventh. Appellants had joined the United Railroad Operating Crafts (UROC), a rival union, and had been dropped from membership in the brotherhood for nonpayment of dues, and the brotherhood had demanded their discharge by the railroad. Appeal to railroad officials, pursuant to the collective bargaining agreement, had not resulted in a ruling which would prevent this; and, without appealing to the National Railroad Adjustment Board, they brought this action in the court below to enjoin such action. The trial judge, while expressing an opinion adverse to appellants on the merits, dismissed the case for lack of jurisdiction on the ground that administrative remedies had not been exhausted. We think that this was unquestionably correct. The case cannot be distinguished from *Alabaugh* v. *Baltimore & Ohio Railroad Co.*, 4 Cir. 222 F. 2d 861, where we fully discussed the controlling principles and authorities, and nothing need be added to what was there said. The distinctions which appellants seek to draw are without substance and were sufficiently answered by what was said by the trial judge in his memorandum opinion.

Affirmed.

APPENDIX C

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7222

William R. Sampsell, Ray C. Resh, Milton R. Cochran, Daniel R. Noble, John W. Raupach, Earl Albertson, Junior A. Avers, Wallace L. Avers, M. S. Bennett, Hubert Ball, Charles R. Bergner, C. F. Biser, Gerald Barb, George D. Beal, Thomas P. Counihan, J. D. Clark, Maurice D. Clem, Louis R. Davis, James F. Decker, C. V. DeVelbiss, G. Friend, Michael D. Gleason, H. H. Groves, et al.,

Appellants,

vs.

The Baltimore and Ohio Railroad Company, a body corporate, Brotherhood of Railroad Trainmen, an unincorporated association, General Grievance Committee, Brotherhood of Railroad Trainmen, Baltimore and Ohio Railroad System, an unincorporated association,

Appellees.

Appeal from the United States District Court for the District of Maryland.

This cause came on to be heard on the record from the United States District Court for the District of Maryland, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said District

Court appealed from, in this cause be, and the same is hereby, affirmed with costs.

JOHN J. PARKER,
Chief Judge, Fourth Circuit.

MORRIS A. SOPER,
United States Circuit Judge.

GEORGE BELL TIMMERMAN,
United States District Judge.

Filed July 13, 1956

R. M. F. WILLIAMS, JR.,
Clerk.

(Seal)

Office - Supreme Court, U.S.
FILED
OCT 8 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 363

WILLIAM R. SAMPSELL, ET AL.,
Petitioners,

VS.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
A BODY CORPORATE
AND
BROTHERHOOD OF RAILROAD TRAINMEN,
AN UNINCORPORATED ASSOCIATION,
AND
GENERAL GRIEVANCE COMMITTEE, BROTHERHOOD OF RAILROAD TRAINMEN, BALTIMORE AND OHIO RAILROAD SYSTEM, AN UNINCORPORATED ASSOCIATION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF THE BROTHERHOOD OF RAILROAD TRAINMEN AND GENERAL GRIEVANCE COMMITTEE, BROTHERHOOD OF RAILROAD TRAINMEN, BALTIMORE AND OHIO RAILROAD SYSTEM, IN OPPOSITION

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Baltimore and Ohio Railroad System.

The Daily Record Co., Baltimore 3, Md.

INDEX

Table of Contents

	PAGE
Opinions Below	2
Jurisdiction	2
Statute Involved	2
Question Presented	2-3
Statement of the Case:	
Nature of the Action	3
Statement of Facts	4-10
Argument:	
Reasons for Denial of Writ:	
I. There is no conflict in the decisions of the Circuit Courts of Appeal that exclusive primary jurisdiction of disputes involving the interpretation of union shop agreements, is within the administrative tribunals created by the Railway Labor Act	10-14
II. No important Federal question, requiring settlement by this Court, is presented	14
III. The legal aspects of Rychlik v. Pennsylvania R.R. Co. are entirely distinct from those of this case	14-15
Conclusion	16

Table of Citations

Cases

	PAGE
Alabaugh v. Baltimore & O. R.R. Co., C.C.A. 4, 222 F. 2d 861 (1955), cert. denied 350 U. S. 839, 76 S. Ct. 77 (1955)	11, 12, 13, 15
Atlantic Coast Line R. Co. v. Pope, C.C.A. 4, 119 F. 2d 39 (1941)	13
Bohnen v. Baltimore & Ohio R.R. Co., D.C., N.D. Ind., 125 F. Supp. 463 (1954)	7, 10
Edwards v. Capital Airlines, C.A., D.C., 176 F. 2d 755 (1949)	15
Johns v. Baltimore & O. R.R. Co., D.C., N.D. Ill., E.D., 118 F. Supp. 317 (1954), aff. 347 U. S. 964, 74 S. Ct. 776 (1954)	7
Order of Railway Conductors v. Pitney, 326 U. S. 561, 66 S. Ct. 322 (1946)	11-12
Pigott v. Detroit, T. & I. R. Co., C.C.A. 6, 221 F. 2d 736 (1955), cert. denied 350 U. S. 833, 76 S. Ct. 68 (1955)	11
Rychlik v. Pennsylvania R.R. Co., D.C., W.D., N.Y., 128 F. Supp. 449 (1955), rev. C.C.A. 2, 229 F. 2d 171 (1956), cert. granted 351 U. S. 930, 76 S. Ct. 789 (1956)	14, 15
Sampsell v. Baltimore & Ohio R. Co., D.C., Md., unreported (1956), aff. C.C.A. 4, unreported (1956)	1-2, 4, 6, 8, 10, 11, 14
Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, 70 S. Ct. 577 (1954)	12
U.R.O.C. v. Northern Pac. R. Co., C.C.A. 9, 208 F. 2d 135 (1954), cert. denied 347 U. S. 929, 74 S. Ct. 529 (1954)	11
U.R.O.C. v. Pennsylvania R.R. Co., C.C.A. 7, 212 F. 2d 938 (1954), cert. denied 347 U. S. 929, 74 S. Ct. 531 (1954)	11
U.R.O.C. v. Wyer, C.C.A. 2, 205 F. 2d 153 (1953), cert. denied 347 U. S. 929, 74 S. Ct. 529 (1954)	11

Statutes

	PAGE
Judiciary and Judicial Procedure, Title 28, U.S.C.A.:	
Sec. 1254(1)	2
Railway Labor Act, Title 45, U.S.C.A.	5, 11, 12
Sec. 152 Fourth	2
Sec. 152 Fifth	2
Sec. 152 Eleventh	2, 4
Sec. 152 Eleventh (c)	4
Sec. 153 First	2, 13
Sec. 153 First (a)	13
Sec. 153 First (f)	13, 14
Sec. 153 Second	2, 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 363

WILLIAM R. SAMPSELL, RAY C. RESH, EARL ALBERTSON, JUNIOR A. AVERS, WALLACE L. AVERS, M. S. BENNETT, HUBERT BALL, C. F. BISER, GEORGE D. BEAL, THOMAS P. COUNIHAN, J. D. CLARK, MAURICE D. CLEM, LOUIS R. DAVIS, JAMES F. DECKER, C. V. DEVELBISS, H. H. GROVES, KENNETH HOSTETLER, ELMER R. HEITT, C. O. KEARCHNER, MAHLAN A. LEATHERMAN, HAROLD C. LEGEER, M. F. MILLER, ROBERT A. PANCAKE, GLENN W. STRICKLER, FRANK L. K. SMITH, FRANK A. TROZZO, E. B. WISEMAN, I. M. WATKINS, C. M. KENNEDY, G. H. R. DAVIS, H. M. SAVILLE, AND G. B. JONES,

Petitioners,

VS.

THE BALTIMORE AND OHIO RAILROAD COMPANY, A BODY CORPORATE

AND

BROTHERHOOD OF RAILROAD TRAINMEN, AN UNINCORPORATED ASSOCIATION,

AND

GENERAL GRIEVANCE COMMITTEE, BROTHERHOOD OF RAILROAD TRAINMEN, BALTIMORE AND OHIO RAILROAD SYSTEM, AN UNINCORPORATED ASSOCIATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF THE BROTHERHOOD OF RAILROAD TRAINMEN AND GENERAL GRIEVANCE COMMITTEE, BROTHERHOOD OF RAILROAD TRAINMEN, BALTIMORE AND OHIO RAILROAD SYSTEM, IN OPPOSITION

The Petitioners seek the issuance of a Writ of Certiorari to review the Judgment of the United States Court of Ap-

peals for the Fourth Circuit, entered on July 13, 1956 (Petition 30, 31[1], Record 10, 11[2]), which affirmed the Order of the United States District Court for the District of Maryland entered on April 23, 1956 (Appellants' Appendix in the Court of Appeals 43, 44, R.1. 43, 44[3]), denying the application for a temporary restraining Order and for a preliminary injunction, and dismissing for want of jurisdiction.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit has not yet been officially reported, but is reprinted as Petitioners' Appendix B. 28, 29[4] (R. 6-8). The opinion of the United States District Court has not been officially reported, but is reprinted at A.A. 29-43 (R.1. 29-43).

JURISDICTION

The Petitioners seek to invoke the jurisdiction of this Court under Title 28, U.S.C.A., Sec. 1254(1).

STATUTE INVOLVED

The pertinent provisions of the Railway Labor Act, 45 U.S.C.A., Sec. 152, Fourth, Fifth, Eleventh, and, Sec. 153 First, Second, are reprinted as Petitioners' Appendix A. 21-27 (P. 21-27).

QUESTION PRESENTED

Do the Courts have jurisdiction to adjudicate the claimed right of continued employment asserted by railroad employees whom the railroad has ordered dismissed for non-

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[1] Petition hereinafter designated as P.
[2] Record hereinafter designated as R.
[3] Appellants' Appendix in the Court of Appeals hereinafter designated as A.A.
[4] Petitioners' Appendix hereinafter designated as P.A.

compliance with a valid union shop agreement, when available administrative remedies have not been utilized?

STATEMENT OF THE CASE

Nature of the Action

On March 29, 1956, a Complaint was filed in the United States District Court for the District of Maryland by some of the named Petitioners individually and on behalf of all other employees of The Baltimore and Ohio Railroad Company as a class who are similarly situated, against the Respondents, in which they prayed for a permanent injunction, a temporary injunction, and/or restraining order to prevent their discharge for non-compliance with a union shop agreement between The Baltimore and Ohio Railroad Company[5] and the employees represented by the Brotherhood of Railroad Trainmen.[6] During the course of the hearing in the District Court, the Complaint was amended whereby forty more named Petitioners were added (twelve having since been dropped), and the Petitioners' class limited to the Cumberland Division of the Company (A.A. 2, R.1. 2). The District Court assumed that the Complaint intended to pray for a temporary restraining Order or for a preliminary injunction and so regarded the proceeding (A.A. 33, R.1. 33). The Court, on its own motion, raised the question of jurisdiction (A.A. 33, 44, R.1. 33, 44) and oral motions to dismiss for want of jurisdiction were made on behalf of all Respondents (A.A 33, 44, R.1. 33, 44). By agreement of the parties, the case was heard on the combined motions (A.A. 34, R.1. 34).

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[5] The Baltimore and Ohio Railroad Company hereinafter designated as Company.

[6] Brotherhood of Railroad Trainmen hereinafter designated as Brotherhood.

After five days of hearings (A.A. 34, R.1. 34), The District Court of Maryland (Watkins, J.) rendered an oral opinion (April 11, 1956, A.A. 29-43, R.1. 29-43), setting forth its findings of fact and conclusions of law, and on April 23, 1956, entered an Order denying the application for a temporary restraining Order and for a preliminary injunction and dismissing for want of jurisdiction (A.A. 43-44, R.1. 43-44). The United States Court of Appeals for the Fourth Circuit, in a per curiam opinion (P. 28-29, R. 6-7) affirmed the Order of the District Court and entered Judgment thereon on July 13, 1956 (P. 30-31, R. 10-11).

STATEMENT OF FACTS[7]

The Brotherhood, representing the employees on the Company's system, entered into a union shop agreement with the Company on September 20, 1951, pursuant to the Union Shop Amendment to the Railway Labor Act[8], 45 U.S.C.A., Sec. 152, Eleventh.[9] The agreement became effective on October 1, 1951.

Sec. 1 of the agreement requires all employees subject to the agreements between the Brotherhood and the Company, to become members of the Brotherhood within sixty days of the date they first perform compensated service, after the effective date of the agreement, and provided further, that they thereafter shall maintain membership in the Brotherhood (A.A. 17, R.1. 17). Notwithstanding this latter requirement, they are given the right by the Act, Sec. 152, Eleventh (c) to change from one union to another, provided the latter represent their craft and be "national in scope."

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[7] Deemed advisable because Petitioners' Brief frequently refers to alleged factual matters not contained in Petitioners' "Brief Statement of Facts" (P. 7-8).

[8] Railway Labor Act hereinafter designated as Act.

[9] Approved January 10, 1951, Public Law 914, 81st Congress, 64 Stat. 1238.

Sec. 5(c) of the agreement provides that, after a request has been received by a cited employee, pursuant to Sec. 5(b), the Company shall determine on the basis of the evidence produced at the hearing whether or not the employee has complied with the terms of the agreement and shall render a decision accordingly. It provides, further, that if the decision of the Company is not satisfactory to the employee or to the Brotherhood, it may be appealed directly to the highest officer of the Company designated to handle such appeals, and, that decision is final and binding (A.A. 20, R.1. 20), unless the Brotherhood has the matter referred to a committee for decision, in accordance with the provisions of Sec. 8 (A.A. 20-21, R.1. 20-21).

The Petitioners are employed mainly in the capacity of brakemen, or yard-helpers, or conductors, or switch-tenders, on the Company's lines in and about the Cumberland, Maryland, area (Complaint, A.A. 5, R.1. 5). Their employment rights are governed in general by a collective agreement, as amended by the union shop agreement (A.A. 17-22, R.1. 17-22). Late in 1952 and early in 1953, they ceased paying dues to the Brotherhood and became members of the United Railroad Operating Crafts,[10] another union (not proved to be "national in scope" within the meaning of the Railway Labor Act). They thereby became subject to expulsion from the Brotherhood for non payment of dues in accordance with the Constitution of the Brotherhood (Appellees' Joint Appendix in the Court of Appeals 68. R.2. 68).[11] At various times thereafter,[12] the Petitioners

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[10] United Railroad Operating Crafts hereinafter designated as U.R.O.C.

[11] Appellees' Joint Appendix in the Court of Appeals hereinafter designated as J.A.

[12] Petitioner Counihan on October 16, 1952 (A.A. 69, R.1. 69); Davis, on April 20, 1953 (A.A. 74, R.1. 74); Groves, on April 20, 1953 (A.A. 115, R.1. 115); Wiseman on July 23, 1953 (A.A. 48, R.1. 48).

were cited by the General Grievance Committee, Brotherhood of Railroad Trainmen[13, 14] for non-compliance with the union shop agreement, in failing to pay dues. Several of the Petitioners claimed that they were members of an organization national in scope, other than the Brotherhood.[15] One of the Petitioners claimed that his job was not covered by the union contract.[16] Several claimed that they had applied for reinstatement to the Brotherhood prior to the date of their citation.[17]

Pursuant to Sec. 5(b) of the agreement (A.A. 19, R.1. 19), the Petitioners requested hearings — most of which were held before the terminal trainmaster on August 11, 1953 (A.A. 45, R.1. 45, J.A. 6, R.2. 6) and were stenographically reported (J.A. 6, R.2. 6). The Petitioners were represented by counsel and also by the Local Representative of U.R.O.C. (J.A. 6, 10, R.2. 6, 10).

The agreement provided for a decision to be rendered on the hearing within ten calendar days of the hearing date (A.A. 20, R.1. 20). However, an oral understanding was had between the General Chairman of the Committee and the Company, whereby it was agreed that the decision on the

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[13] General Grievance Committee, Brotherhood of Railroad Trainmen, Baltimore and Ohio Railroad System hereinafter designated as Committee.

[14] The Committee is responsible for enforcing the provisions of the union shop agreement and handling of all grievances pertaining to the agreement after they have been referred to the Committee by the Local Lodges (A.A. 132, 133, R.1. 132, 133).

[15] The District Court found that Petitioner Wiseman had not proved his claim by a preponderance of the evidence (A.A. 41, R.1. 41).

[16] The District Court found that Petitioner Kearchner had failed to establish his claim by a preponderance of the evidence (A.A. 41, R.1. 41).

[17] The District Court found that Petitioners Groves, Davis and Clem did not prove by a fair preponderance of the evidence that at the time of their respective citations, they had applied in the manner required for reinstatement in their local lodges (A.A. 41, R.1. 41).

U.R.O.C. cases would be held in abeyance until such time as certain pending Court cases[18] were cleared up (A.A. 86, R.1. 86). On December 8, 1954, the General Chairman of the Committee wrote the Company to the effect that inasmuch as the pending court cases had been settled, he desired action taken with respect to all those U.R.O.C. cases that had been held in abeyance (A.A. 86, R.1. 86). During this entire time, the Petitioners retained their regular jobs and received their regular pay.

Decisions adverse to the Petitioners were rendered by the hearing officer, and, after notification by the Company that they would be discharged, all of the Petitioners requested appeal hearings in accordance with the terms of Sec. 5(c) of the agreement (A.A. 20, R.1. 20). The appeal hearings were held from January through March of 1955[19] before the hearing officer, an attorney in the employ of the Company and designated by the Vice-President of the Company, and were stenographically reported (J.A. 3, R.2. 3). The Petitioners were represented at their appeal hearings by counsel (A.A. 75, 80, 83, 84, R.1. 75, 80, 83, 84, J.A. 3, R.2. 3).

The Company allowed the trial of the appeal cases de novo in order to give the employees a full opportunity to establish all the pertinent facts, and the employees all knew they were allowed to make a full record in this hearing

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[18] *Johns v. Baltimore & O. R.R. Co.*, D.C., N.D. Ill., E.D., 118 F. Supp. 317 (1954), aff. 347 U.S. 964, 74 S. Ct. 776 (1954); *Bohnen v. Baltimore & Ohio R.R. Co.*, D.C., N.D. Ind., 125 F. Supp. 463 (1954).

[19] Petitioner Counihan, on January 11, 1955 (A.A. 60, R.1. 60); Clem, on January 11, 1955 (A.A. 75, R.1. 75); DeVelbiss, on February 3, 1955 (A.A. 83, R.1. 83); Groves, on February 8, 1955 (A.A. 84, R.1. 84); Davis, on February 8, 1955 (A.A. 80, R.1. 80); Wiseman, on March 2, 1955 (A.A. 46, R.1. 46).

(A.A. 47, R.1. 47). The parties were advised by the hearing officer that the record would be left open for submission of affidavits (A.A. 105, 106, R.1. 105, 106, J.A. 58, R.2. 58), and, the parties were permitted to furnish proof on various matters and were permitted to fill the gap from time to time and to submit papers (J.A. 34, R.2. 34). The hearings were held on an informal basis. Petitioners' counsel was permitted to ask leading questions — a number of which called for conclusions of law and expressions of opinion (J.A. 61, R.2. 61), and, Petitioners were permitted to testify as to hearsay (A.A. 115, R.1. 115).

During the course of the appeal hearings, the General Chairman of the Committee testified that there was a great possibility that the national organization would favorably entertain an application if it is approved by the local lodges (A.A. 135, R.1. 135), but that was a prophecy (J.A. 78, R.2. 78). The Petitioners claim that he made certain statements relative to his personal feelings in this matter (A.A. 63, 64, R.1. 63, 64). However, he testified in the District Court that he did not make the statements attributed to him[20] (A.A. 131, R.1. 131). On the contrary, he said that the discussion was confined to the manner in which or the procedure the Brotherhood adopted for these men to regain membership in the Brotherhood (A.A. 132, R.1. 132, J.A. 69, R.2. 69). He further testified that the policy has ordinarily been, up to the time the charges are actually preferred or even up to the time the hearing has begun, to endeavor to get these men into the Brotherhood (J.A. 76, R.2. 76); that Brotherhood organizers were placed into this territory on several occasions at the expense of the Committee to acquaint these men with the provisions and bene-

[20] The District Court found as a fact that he did not make the remarks attributed to him (A.A. 38, R.1. 38).

fits of the Brotherhood and the union shop agreement (J.A. 77, R.2. 77).[21]

After the appeal hearings, the Petitioners claim that four petitions were prepared and circulated with respect to their reinstatement (A.A. 65, 93, R.1. 65, 93). However, no one knew what was done with the petitions (A.A. 93, R.1. 93), nor, had any knowledge of them been brought to the attention of the General Chairman of the Committee, to whom they were alleged to have been addressed (A.A. 95, R.1. 95, J.A. 65, R.2. 65). The correct procedure for readmission into a local lodge of the Brotherhood after persons had been out more than sixty days (which was the situation of all of the Petitioners) was for them to sign the usual Form 130 (J.A. 64, 70, R.2. 64, 70); the forms are then given to the Secretary of the local Lodge, an investigating committee is then appointed, and upon their favorable vote, the applications are submitted to the members of the local Lodge present at the regular meeting for a vote (J.A. 64, 78, R.2. 64, 78). Petitioners' counsel admitted in the District Court that Petitioners had never gone through the procedure of being reinstated (J.A. 25, R.2. 25), were never formally readmitted to membership in the Brotherhood (A.A. 73, R.1. 73), and were never notified by the Brotherhood or by the lodges that they were reinstated (J.A. 25, R.2. 25).

The Petitioners' appeal hearing cases have been officially decided and the employees held to be in non-compliance with the union shop agreement. However, because of an

[21] Apparently these efforts were successful, because even though there may have been thousands who joined U.R.O.C. (P. 6), these Respondents are informed that there were less than 100 named plaintiffs in suits throughout the country — the reasonable inference being that after the decisions in the other U.R.O.C. litigated cases, most of the employees either dropped out of U.R.O.C. while retaining membership in another union "national in scope", or, joined another union "national in scope".

injunction issued in the McNamar case,[22] which extended from January of 1955 to about March of 1956 (A.A. 37, R.1. 37, J.A. 41, R.2. 41), the Company did not notify the Petitioners until March 23, 1956 (A.A. 9, R.1. 9) that their employment would cease on April 2, 1956 (A.A. 9, 13, R.1. 9, 13). After the filing of the Complaint and during the course of the hearings in the Court below, the employment of all of the Petitioners remained status quo by virtue of an agreement between the parties (A.A. 33, R.1. 33). On April 16, 1956, the District Court, by an Order, granted an injunction pending appeal, restraining the Company from discharging the Petitioners and restraining the Brotherhood and the Committee from inducing the discharge of the Petitioners. On August 13, 1956, the Court of Appeals by Order granted a stay of the Mandate of the Appellate Court pending the application to this Court for Writ of Certiorari (R. 11). Pursuant thereto, the employment of all the Petitioners has remained status quo.

ARGUMENT

REASONS FOR DENIAL OF WRIT

I. There is no conflict in the decisions of the Circuit Courts of Appeal that exclusive primary jurisdiction of disputes involving the interpretation of union shop agreements, is within the administrative tribunals created by the Railway Labor Act.

The Petitioners abandoned their membership in the Brotherhood (the contracting organization), and joined U.R.O.C. They were then cited by the Brotherhood as being in non-compliance with the union shop agreement, for non-payment of dues. They thereupon requested and were afforded hearings by the Company's terminal trainmaster.

[22] Reported as *Bohnen v. Baltimore & O. R.R. Co., supra.*

After decisions adverse to them were rendered, they requested and were afforded appeal hearings. Decisions adverse to them were again rendered, and, they were thereafter notified by the Company of their imminent discharge. Prior to the scheduled date of their discharges, and without having exhausted the administrative remedies provided by the Railway Labor Act, the Petitioners sought Court intervention, by way of injunctive relief, to restrain their discharges.[23]

The facts, as related, are not distinguishable from those involved in the other U.R.O.C. litigated cases, infra, wherein the Second, Fourth, Sixth, Seventh and Ninth Circuit Courts of Appeal have uniformly held that the disputes before them were those growing out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, and, were, therefore, within the exclusive primary jurisdiction of the administrative tribunals created by the Railway Labor Act. *U.R.O.C. v. Wyer*, C.C.A. 2, 205 F. 2d 153 (1953), cert. denied 347 U. S. 929, 74 S. Ct. 529 (1954); *Alabaugh v. Baltimore & Ohio R. R. Co.*, C.C.A. 4, 222 F. 2d 861 (1955), cert. denied 350 U. S. 839, 76 S. Ct. 77 (1955); *Pigott v. Detroit, T. & I. R. R. Co.*, C.C.A. 6, 221 F. 2d 736 (1955), cert. denied 350 U. S. 833, 76 S. Ct. 68 (1955); *U.R.O.C. v. Pennsylvania R. Co.*, C.C.A. 7, 212 F. 2d 938 (1954), cert. denied 347 U. S. 929, 74 S. Ct. 531 (1954); *U.R.O.C. v. Northern Pac. Co.*, C.C.A. 9, 208 F. 2d 135 (1954), cert. denied 347 U. S. 929, 74 S. Ct. 529 (1954). All of the appellate decisions conform with the views expressed by this Court in *Order of Railway Conductors v.*

[23] After a lengthy hearing on Motions to Dismiss, the District Court dismissed the Complainant for lack of jurisdiction, since the Complaint, of necessity, would have required the Court to interpret and apply a union shop agreement. The action of the District Court was affirmed on appeal.

Pitney, 326 U. S. 561, 66 S. Ct. 322 (1946), wherein it was stated:

> "* * * Not only has Congress thus designated an agency peculiarly competent to handle the basic question here involved, but as we have indicated in several recent cases in which we had occasion to discuss the history and purpose of the Railway Labor Act, it also intended to leave a minimum responsibility to the Courts."

and, in *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239, 70 S. Ct. 577 (1954), wherein it was stated:

> "* * * The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. * * *"

Notwithstanding the language of this Court in the *Pitney* and *Slocum* cases, supra, as adopted by the appellate courts, the Petitioners contend that they have exhausted all of their administrative remedies. Their basis for this argument is that the agreement created a system board of adjustment, and, since they were prevented from appealing to it, the decision of the appeals hearing officer was final and binding upon them. This contention is without substance. The words "final and binding" were never construed nor intended by the parties to preclude a further appeal to the administrative tribunals created by the Act, but, only to further proceedings **on the property**. There was the same contractual provision in the *Alabaugh* case, supra, yet the disputes of Burton C. Johns, Herbert V. Thompson and Virgil G. Hughes were petitioned by the Company to the National Railroad Adjustment Board — the Board having docketed the cases and taking jurisdiction (First Division, Docket 33149).

The basis of the Petitioners' argument falls, because there was no system board of adjustment. The identical contractual provision and the same contention as to the creation of a system board of adjustment, was before the Court of Appeals for the Fourth Circuit in the *Alabaugh* case, supra. There, it was stated (p. 866):

> "None of the grounds upon which it is sought to distinguish these cases has any merit. It is argued on the authority of our decision in Atlantic Coast Line R. Co. v. Pope, 4 Cir., 119 F. 2d 39, that the Board has no jurisdiction because of the provisions for appeal and arbitration in the union shop agreement; but *it is perfectly clear that the provision for the procedure prescribed by the agreement is in no sense the creation of a System Board of Adjustment such as we dealt with in the Pope case;* and in none of the cases cited, in which the same union shop agreement was involved, does it seem to have been thought that the jurisdiction of the Board was in anywise affected by the provision. *Furthermore, the provision of the agreement referred to relates to disputes between the Brotherhood and the carrier and not to grievances of the employees against the carrier.*" (Emphasis ours.)

Since the exclusive primary jurisdiction of this type of dispute is within administrative tribunals, the dispute must be submitted to those tribunals created by Sec. 153 First of the Act. This Section creates not only the National Railroad Adjustment Board but, also provides for the establishment of a special three-man board (First (f)).[24]

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[24] Sec. 153 First (f) provides for the Secretary of Labor and a three-man special three-man board to determine a dispute as to whether a labor organization has the right to participate in the selection of the labor members of the National Railroad Adjustment Board, as only those labor organizations which are "national in scope" can participate in such selection, Sec. 153 First (a).

The National Railroad Adjustment Board can resolve the eight issues raised by the Complaint.[25] However, it can only resolve the issue of "national in scope" upon the basis of whether or not U.R.O.C. has utilized the machinery provided by Sec. 153 First (f) to have itself officially determined to be "national in scope" —as this issue is specifically entrusted to the Secretary of Labor and a special three man board established by Sec. 153 First (f).

II. No important Federal question, requiring settlement by this Court, is presented.

There is no dissimilarity in the facts of this case with those involved in the other U.R.O.C. litigated cases, supra. The decision of the appellate court is in conformity with the decisions of the Courts of Appeal for the Second, Fourth, Sixth, Seventh and Ninth Circuits, supra, which have uniformly resolved the forum for and the remedies of the relatively small number of railroad employees involved.[26] Their requirements are neither unfair nor unduly burdensome.

III. The legal aspects of Rychlik v. Pennsylvania R.R. Co. are entirely distinct from those of this case.

In *Rychlik v. Pennsylvania R.R. Co.*, D. C., W. D., N. Y., 128 F. Supp. 449 (1955), the plaintiff had voluntarily dropped his membership in the Brotherhood and joined

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[25] The issues were (1) partiality of the Railroad Adjustment Board; (2) affiliation with other unions national in scope; (3) creation of a system board of adjustment; (4) unreasonable delays in the hearings and illegal extensions of time; (5) de facto reinstatement; (6) U.R.O.C. being "national in scope"; (7) unfair hearings and denial of due process; (8) discrimination — all of which were passed upon by the District Court (A.A. 34-41, R.I. 34-41).

[26] Although Petitioners claim (P. 6) that there were thousands who joined U.R.O.C., these Respondents are informed that there were less than 100 named plaintiffs in all of the suits filed.

U.R.O.C. He was thereafter cited for non-compliance with the union shop agreement. He requested and was afforded a hearing before a System Board of Adjustment.[27] A decision adverse to Rychlik was rendered, and, he was then notified by the Railroad of the termination of his service. He thereafter sought reinstatement to his employment, by way of injunctive relief. Motions to dismiss the Complaint were granted, but the judgment was reversed on appeal, on the ground that the findings of the System Board of Adjustment were subject to judicial review because of the possibility of the Board not being impartial. *Rychlik v. Pennsylvania R.R. Co.*, C.C.A. 2, 229 F. 2d 171 (1956). Upon petition of the Railroad and the Brotherhood, certiorari was granted and the matter is now pending in this Court. 351 U.S. 930, 76 S. Ct. 789 (1956).

In the instant case, a system board of adjustment was not created. *Alabaugh v. Baltimore & O. R.R. Co.*, supra. No hearing was had before a system board of adjustment, such as in the *Rychlik* case, supra, or in *Edwards v. Capital Airlines*, C.C.A., D. C., 176 F. 2d 755 (1949), so that no question of reviewability of a system board's findings, is involved.

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[27] The System Board of Adjustment was created by the union shop agreement, pursuant to Sec. 153 Second of the Railway Labor Act. It was a Board to which any of the parties, including an aggrieved employee, could submit a dispute.

CONCLUSION

For the aforegoing reasons, these Respondents respectfully pray that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 363

WILLIAM R. SAMPSELL, ET AL.,
Petitioners,

VS.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
A BODY CORPORATE
AND
BROTHERHOOD OF RAILROAD TRAINMEN,
AN UNINCORPORATED ASSOCIATION,
AND
GENERAL GRIEVANCE COMMITTEE, BROTHERHOOD OF RAILROAD TRAINMEN, BALTIMORE AND OHIO RAILROAD SYSTEM, AN UNINCORPORATED ASSOCIATION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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INDEX

	PAGE
Petition for Rehearing of Order Denying Petition for Writ of Certiorari	1
Reasons for Granting Rehearing and Issuing the Writ	2
Intervening Circumstances of Substantial Effect	2
Other Substantial Grounds Available to Petitioners Although Not Previosuly Presented	4
Reasons for Granting the Writ of Certiorari Pursuant to Section 1651	5
Jurisdiction of this Court	5
Argument	5
Conclusion	7
Certificate of Counsel	7
Motion for Leave to File Petition Under Section 1651, etc.	9

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PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioners pray that this Court grant rehearing of its order of December 10, 1956, denying the petition for writ of certiorari, 352 U.S. ....., and that a writ of certiorari

issue to review the judgment of the Court of Appeals for the Fourth Circuit as prayed for in the petition filed August 30, 1956, herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

Intervening Circumstances of Substantial Effect

On December 10, 1956, the date on which the order denying certiorari was announced, this Court heard argument in the strikingly similar case of *Pennsylvania R. Co. v. Rychlik*, No. 56 (on certiorari to the Court of Appeals for the Second Circuit), such argument continuing and being concluded on December 11, 1956. Said case is now *sub curia* awaiting decision. In the course of such argument, colloquy between the Court and counsel developed and enlarged on the following difficult questions common to both the *Rychlik* case and the present case which will almost necessarily be determined by this Court's impending decision:

1. Is a final administrative decision that petitioners were in default under a union shop agreement, rendered pursuant to a system board procedure, subject to judicial review (a) merely because the Brotherhood's representatives participate therein and are presumptively biased or (b) when actual bias is alleged and proved?

2. In determining whether "UROC" (the union to which petitioners in this case as well as respondent in the *Rychlik* case belonged) was "national in scope", is it conclusive against such claim that UROC had not placed a representative on the National Railroad Adjustment Board pursuant to Section 3, First (f) of the Railway Labor Act?

3. Does the Union Shop Amendment (Section 2, Eleventh of the Railway Labor Act), in conferring a statutory right

on petitioners to belong to a union which is national in scope and thus retain their employment, afford them no remedy to enforce the right except at the election of such union to proceed administratively under Section 3, First (f), and subject to the further requirement that the opposing unions must first certify a dispute to the Secretary of Labor?

4. Can the employees' bargaining agent, occupying a trust relationship to them, decline to reinstate them in membership after a default and still claim that membership is "available" to them under the requirements of Section 2, Eleventh (a) of the Railway Labor Act?

We shall not here enlarge on these points. It is both expedient and in the interest of substantial justice that the present case should remain subject to the jurisdiction of this Court until the above questions are concluded by the decision in the *Rychlik* case.

Upon such decision, the sole remaining question for determination in this case will be whether petitioners' complaint presents a true system board procedure analogous to that in the *Rychlik* case[1] and whether petitioners have exhausted their administrative remedies thereunder. Petitioners request only that they be given the opportunity to convince this Court that the union shop agreement in their case makes the decision heretofore rendered against them "final and binding" (Section 5) and that the hearing pro-

[1] It is respectfully urged that this Court would be in a better position to render a just decision as to the similarities and dissimilarities of the *Rychlik* case and the present case after the hearing of December 10-11. One of the justices then stated frankly in open court that he had been unable to familiarize himself with the briefs prior to the argument; and the detailed circumstances of the two cases can scarcely have been as clearly in the Court's mind when certiorari was denied as they would be today.

cedure setting up the board of adjustment (Section 8) "shall be the sole and exclusive method for determining disputes under this agreement".[2] It cannot be denied that petitioners have followed to the end the procedure set up in the agreement; and if it qualifies as a system board procedure, it effectively ousts the jurisdiction of the National Railroad Adjustment Board.

Attention of the Court is, further, called to the applicability of *Steele v. Louisville & N. R. Co.* (1944) 323 U.S. 192, in the enforcement of the fiduciary duties of the bargaining agent toward the individual employee. This point was more fully treated in the petition for certiorari in a similar case, *Alabaugh v. Baltimore & Ohio R. Co.*, cert. den. 350 U.S. 831.

Other Substantial Grounds Available to Petitioners Although Not Previously Presented.

The petition for certiorari in this case invoked the Court's jurisdiction under U.S. Code, Title 28, Section 1254(1), the usual provision for review by certiorari.

Further consideration has led to the conclusion that this case is a proper one for review by this Court by issuance of the so-called "common law" writ of certiorari under Section 1651 of Title 28, since the issue is essentially whether the District Court has improperly refused to entertain a cause of action appropriately within its jurisdiction.

Therefore, petitioners attach a motion for leave to have their petition for certiorari also considered by this Court under Section 1651.

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[2] The union shop agreement is set out in Appellants' Appendix in the Court below (filed with the Petition for Certiorari), at pp. 17-22.

(The following brief argument upon this question is based upon the assumption that the Court grants such motion.)

REASONS FOR GRANTING THE WRIT OF CERTIORARI PURSUANT TO SECTION 1651.

Jurisdiction of this Court

The jurisdiction of this Court is invoked under U.S. Code, Title 28, Section 1651.

Argument

As stated by this Court in *United States Alkali Assn. v. United States*, 325 U.S. 196, at p. 202:

> "The traditional use of such writs both at common law and in the federal courts has been, in appropriate cases, to confine inferior courts to the exercise of their prescribed jurisdiction or *to compel them to exercise their authority when it is their duty to do so.*" (Italics supplied; citing *In re Chetwood*, 165 U.S. 443, 462.)

In the present case substantial hardship will be imposed on petitioners if they are obliged to invoke the supposed jurisdiction of the National Railroad Adjustment Board (pursuant to the lower court's decision dismissing their bill), without any statutory provision for review thereof; and without any clear judicial statement as to the nature and scope of possible review. Moreover, they may be met by the contention that the administrative hearings already conducted are "final and binding", as provided by the union shop agreement in this case. Indeed, it cannot possibly be known until an effort is made to have the Board decide the questions, and thereafter to obtain judicial review, what the ultimate ruling of the federal courts on the issues involved would be, or whether such a ruling can ever be obtained.

It is thus clear that the abdication of jurisdiction by the District Court (assuming its decision is erroneous) can only be corrected after years of litigation and may never be corrected at all.

Meanwhile the thirty-two petitioners will suffer irreparable harm, in that they will be discharged from their employment immediately and will not only lose their jobs but the seniority rights which they have accumulated through years of service. And the supposed right to litigate through the Adjustment Board, and thereafter seek judicial review, will be purely illusory to men without employment and without funds to finance litigation.

The present case is precisely the type of case in which precedents sustain review by this Court under Section 1651, for it involves the question of exclusive primary jurisdiction of administrative bodies as affecting the exercise of jurisdiction by the district courts.

> *Far East Conference v. United States*, 342 U.S. 570 (exclusive primary jurisdiction of the Federal Maritime Board);
> *United States Alkali Assn. v. United States*, 325 U.S. 196 (exclusive primary jurisdiction of the Federal Trade Commission);
> *McClellan v. Carland*, 217 U.S. 268 (mandamus to compel federal court not to abdicate its jurisdiction to State Court).

Nor does the fact that the question might otherwise or ultimately be reviewed by this Court affect its right and power to proceed by common law certiorari. *United States Alkali Assn. v. United States, supra; Far East Conference v. United States, supra.* Thus, in the former case, notwithstanding the right of appeal, this Court said, "The questions now presented involve the propriety of the exercise, by the district court, of its equity jurisdiction, and an asserted

conflict between its jurisdiction and that of an agency of Congress . . ." Accordingly, the Court granted the writ and reviewed the case pursuant thereto.

As additional reasons for exercise of the writ in the present case, reference is made to the petition for certiorari herein filed pursuant to Section 1254(1).

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Fourth Circuit.

Respectfully submitted,

HERBERT M. BRUNE, JR.,
Attorney for Petitioners.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58(2) of the rules of this Court.

HERBERT M. BRUNE, JR.,
Attorney for Petitioners.